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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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VIACOM INTERNATIONAL INC.,
COMEDY PARTNERS,
COUNTRY MUSIC TELEVISION, INC.,
PARAMOUNT PICTURES CORPORATION,
and BLACK ENTERTAINMENT TELEVISION
LLC,

Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE INC.,

Defendants.

Case No. 07 Civ. 2103 (LLS)

VIACOM AND YOUTUBE JOINT PROPOSED RULE 16(b) SCHEDULING ORDER

I. THE DATE OF THE CONFERENCE AND APPEARANCES FOR THE PARTIES

A. Conference Date: July 27, 2007, continued to August 6, 2007.

B. Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television LLC (collectively, the "Viacom Plaintiffs") are represented by Jenner & Block LLP and Shearman and Sterling, LLP.

C. YouTube, Inc., YouTube, LLC, and Google Inc. ("YouTube" or "Defendants") are represented by Bartlit Beck Herman Palenchar & Scott LLP and Wilson Sonsini Goodrich & Rosati, P.C.

II. A CONCISE STATEMENT OF THE ISSUES AS THEY NOW APPEAR

A. VIACOM:

1. The Viacom Plaintiffs (which include Paramount Pictures and numerous leading cable networks including MTV, Comedy Central, and BET) allege

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that Defendants Google and YouTube have knowingly and intentionally created and operated their YouTube website to promote and profit from massive copyright infringement of television programs and feature films on an unprecedented scale involving hundreds of thousands of pirated video clips. Defendants are thereby willfully violating the intellectual property rights that were created and made valuable by the investment of creativity, time, talent, energy, and resources of content producers of Viacom and other content owners.

2. Defendants conduct constitutes direct copyright infringement, inducement of copyright infringement, contributory copyright infringement, and vicarious copyright infringement. Viacom seeks redress only against Defendants' infringing activity, not any innocent or noninfringing conduct.

3. Based on Defendants' public statements, the Viacom Plaintiffs expect Defendants to place heavy reliance on the so-called safe-harbor provided by the Digital Millennium Copyright Act, 17 U.S.C. § 512(c) ("DMCA"). The DMCA is not a defense to liabilitv, but limits relief against infringers under certain circumstances. Defendants' infringement is not protected by the DMCA, for multiple reasons.

4. Defendants have profited enormously from this infringement. A substantial part of the $1.65 billion purchase price that Google paid for YouTube reflects an enterprise value built on infringement of Viacom's copyrights. Conversely, that infringement has caused substantial monetary harm to Viacom. As permitted by the Copyright Act, Viacom seeks, at its election before judgment, its actual damages plus Defendants' wrongful profits from the infringement, or statutory damages. Viacom also seeks injunctive relief requiring Defendants to take reasonable measures to end the infringement on YouTube.

B. **YOUTUBE:**

1. Plaintiffs' claims in this lawsuit threaten to silence communications by hundreds of millions of people across the globe who exchange information, news, and entertainment through YouTube's video hosting service.

2. Plaintiffs claim that YouTube has directly or indirectly infringed plaintiffs' copyrights. An important part of the case will be plaintiffs' identification of the universe of copyrighted works and alleged infringement at issue so that the parties can determine whether plaintiffs own and have registered each of the copyrighted material it claims to have been infringed.

3. Plaintiffs' claims are barred or defeated by the Digital Millennium Copyright Act's (DMCA) Safe Harbor provisions, including 17 U.S.C. § 512(c) and (d). YouTube will show that it respects the importance of intellectual property rights by not only complying with the DMCA's safe harbor obligations but by going well beyond its requirements to protect intellectual property rights, including those of Plaintiffs. By this lawsuit, plaintiffs seek to upset the careful balance that Congress constructed in the DMCA which balances the rights of copyright holders and the need to protect communications on the internet.

4. YouTube asserts the following additional defenses against plaintiffs' claims: the doctrine of fair use, the doctrine of substantial non-infringing use, estoppel, waiver, laches, copyright misuse, unclean hands, and express or implied licenses granted by Plaintiffs (e.g., plaintiffs putting their own works on YouTube or permitting others to do the same).

5. Plaintiffs claim actual or statutory damages, as well as injunctive relief. At issue will be plaintiffs' entitlement to any damages, including whether plaintiffs have financially benefited from exposure on YouTube, and whether plaintiffs have failed to mitigate any of their alleged damages.

III IDENTIFICATION OF WORKS IN SUIT:

A. Viacom contends that it needs discovery to identify additional copyrighted works and alleged infringements in suit. The parties will work in good faith to ensure that the Viacom Plaintiffs are able to obtain timely appropriate discovery. After a period of ESI discovery the parties will address in the ESI plan the way in which this discovery will be taken. The parties will prioritize this discovery so that it occurs early enough in the discovery period to permit Viacom to timely supplement its identification of asserted copyrights and alleged infringing works, and to permit YouTube to take appropriate discovery concerning those works and alleged infringements.

IV. SCHEDULE:

Event	**Agreed Date**
Initial Disclosures	July 19, 2007
Amend pleadings in accordance with the Federal Rules (other than to identify additional copyrighted works)	December 31, 2007
ESI Issues	
Complete 30b6 deps on ESI	September 14, 2007
ESI Plan to the Court or stipulated by the parties	September 25, 2007
Discovery	
Parties to exchange documents	Rolling basis commencing 30 days from ESI plan

Deadline for document production	March 7, 2008 - Each party agrees to produce 30-40 custodians' documents by this date, such custodians to be identified by the requesting party and/or the disclosing party, at the requesting party's option, and jointly negotiated by the parties to this and the Premier League case, such negotiations to have concluded no later than November 27, 2007. After March 7, 2008, the parties will use their best efforts to produce documents for remaining custodians to be identified as soon as practicable after March 7, 2008. March 7, 2008 will be a "best efforts" date for other non-individual custodial sources. The parties agree that document production will be completed so that the parties will have adequate time to complete depositions by the agreed September 7, 2008 date. Document Production shall be complete by July 7, 2008
Start Third-Party Depositions	November 7, 2007
Start Party depositions	March 7, 2008
Finish fact depositions	September 7, 2008
Fact discovery, including third party discovery, closed	September 7, 2008
Expert reports exchanged	October 7, 2008
Rebuttal reports	November 7, 2008
Expert Depositions completed	December 7, 2008
All discovery completed	December 7, 2008
DISPOSITIVE MOTIONS	
Deadline for filing dispositive motions	To be agreed by the parties or determined by the Court at a later scheduling conference
PRE-TRIAL AND TRIAL	To be agreed by the parties and proposed for the Court's consideration or determined by the Court at a later scheduling conference

V. THE NAMES OF THE PERSONS TO BE DEPOSED:

VIACOM: In accordance with the agreed deposition schedules, Viacom intends to depose the following people. This list may be modified by Viacom as the case progresses. This list does not include persons with knowledge of Google's and YouTube's systems, ESI preservation efforts, former employees and third parties with relevant knowledge.

(1) Eric Schmidt

(2) Larry Page

(3) Sergey Brin

(4) Kent Walker

(5) Shona Brown

(6) Jeff Huber

(7) George Reyes

(8) Omid Kordestani

(9) Tim Armstrong

(10) David Eun

(11) Salar Kamangar

(12) Marissa Mayer

(13) Julio Pekarovic

(14) Susan Wojicki

(15) Michael Moritz

(16) Steve Chen

(17) Chad Hurley

(18) Christopher Maxcy

(19) Kevin Chrisopher Donahue

(20) Brent Hurley

(21) Mayrose Dunton

(22) Bradley Heilburne

(23) Christina Brodbeck

(24) Hong J. Qu

(25) Cuong Do

(26) Dwipal Akhilesh Desai

(27) David Drummond

(28) Joan Braddi

YOUTUBE: After document discovery has been exchanged, YouTube intends to depose the following people. This list may be modified as the case progresses. In addition to the list below, YouTube also intends to take 30(b)(6) depositions on ESI topics for relevant Viacom entities, to depose third parties with relevant knowledge and may depose former employees of Viacom entities with relevant knowledge.

(1) Philippe Dauman

(2) Michael Fricklas

(3) Stephen Colbert

(4) Jon Stewart

(5) Mika Salmi

(6) Antonious Porch

(7) Adam Cahan

(8) Sumner Redstone

(9) Amy Powell

(10) Steve Farrell

(11) Bob Bakish

(12) Kruti Patel

(13) Jason Witt

(14) Nada Stirratt

(15) Erik Flannigan

(16) Monty Sarhan

(17) Blair Harrison

(18) Chet Filippo

(19) Scott Roesch

(20) Donna Cooper

(21) Joseph Molko

(22) Stuart Kauffman

(23) Alexander Carloss

(24) Colette Chestnut

(25) Douglas Herzog

(26) Frederick Huntsberry

(27) Joe Simon

(28) Laurie Lawrence-Dillon

(29) Lori Ruffalo

(30) Scott Mills

(31) Tom Dooley

(32) Warren Solow

(33) Other relevant fact witnesses to be identified during the discovery period, including 30(b)(6) witnesses on certain topics

VI. STATEMENT OF ANY LIMITATIONS TO BE PLACED ON DISCOVERY, INCLUDING ANY PROTECTIVE OR CONFIDENTIALITY ORDERS:

A. Protective Order Issues:

1. The parties have reached agreement on all items in the Protective Order.

2. Plaintiffs reserve the right to seek to modify the protective order in order to be permitted to share Confidential information with persons authorized

to receive or review such documents or other materials under a protective order entered in any other action. Defendants contend that it is not appropriate for anyone other than parties to this case and the Premier League case to have access to the confidential materials disclosed under the joint protective order entered in these cases.

B. The parties have agreed to a stipulation regarding the exchange of expert drafts and communications and a non-waiver stipulation.

C. Discovery Issues:

1. Viacom and YouTube have agreed that, to the extent practicable, discovery will be coordinated with *Premier League v. YouTube*, Case No. 07 Civ 3582 ("Premier League class action"). Viacom, Premier League Limited and Bourne Co. are jointly referred to as "the Collective Plaintiffs" for purposes of this section.

2. All parties to both actions agree that (i) documents produced in one action shall be deemed produced in both actions, (ii) depositions taken in one action shall be deemed taken in both actions, and (iii) interrogatories asked and answered in one action shall be deemed asked and answered in both actions.

3. Format of discovery. The parties will negotiate an ESI Plan and agree to address hard copy production format as part of that proposal.

4. Expert Depositions: No subpoenas need be served on any testifying expert for whom a report is provided. Instead, the party or parties retaining such expert will make such expert available for deposition, at a time mutually agreed to by the parties, consistent with the Court's scheduling order. Unless otherwise agreed between the parties, depositions of experts will be held at a location specified by counsel for the party producing the witness.

D. The below limitations assume that Viacom Inc. affiliates who are not named plaintiffs, including for example, Ifilm, Atom Entertainment, Spike TV, and MTV Networks are considered part of Viacom International, and are not considered to be third parties for purposes of the below agreement.

E. The parties jointly propose the following additional limitations on discovery:

In an effort to coordinate their efforts and streamline discovery, the parties have agreed to the following limits on the time of depositions:

1. Fact depositions: The Collective Plaintiffs may together take up to 225 hours of deposition testimony of YouTube witnesses. The Collective Plaintiffs may together take up to 150 hours of deposition testimony of third parties. YouTube

may take up to 225 hours of deposition testimony of the Collective Plaintiffs, and 150 hours of deposition testimony of third parties. This proposal:

(a) Includes a maximum of 25 hours for each side for ESI depositions under Rule 30(b)(6). For example, YouTube may take up to 25 hours of ESI related depositions of the Collective Plaintiffs, and the Collective Plaintiffs in aggregate may take up to 25 hours of ESI related depositions of YouTube.

(b) Limits each fact witness deposition to 7 hours, except 30(b)(6) depositions; provided, that the parties may extend this limitation by agreement for specific depositions and will cooperate in good faith to reach such agreement, and provided that if the parties cannot reach agreement in a particular case the noticing party may seek such extension from the Court for good cause;

(c) Assumes that cross-examination of a party counts against that party's time limits (not the party that noticed the deposition);

(d) Assumes that each party shall give good faith estimate of how long they will take with each witness 48 hours prior to the deposition;

(e) Assumes that there shall be no speaking objections and no excessive colloquy of opposing counsel counted in the time allotments.

2. Interrogatories

(a) Defendants may serve 25 interrogatories on the Viacom Plaintiffs, and the Viacom Plaintiffs together may serve a total of 25 interrogatories on Defendants.

(i) An interrogatory that asks for a certain piece of information for each plaintiff counts as one interrogatory.

VII. ANTICIPATED FIELDS OF EXPERT TESTIMONY, IF ANY

A. VIACOM

Plaintiffs anticipate that expert testimony will include, but not necessarily be limited to, the following fields:

1. Technological issues, including the operation of the YouTube and Google video websites, screening and filtering technologies, and other related issues.

2. The YouTube, Google Video, and Google business models, including the contribution of unauthorized copyrighted content to the commercial success of YouTube and Google.

3. Damages, including the scope and frequency of infringement of Plaintiffs' copyrighted works, the harm Plaintiffs have suffered as a result of defendants' infringement, and the present and anticipated future value to defendants of the availability of unauthorized copyrighted works on YouTube and Google Video.

B. YOUTUBE

1. Technological issues, including methods of screening for copyrighted content and Plaintiffs' failure to take reasonable measures to protect their copyrighted works.

2. Industry practices re: DMCA compliance.

3. Internet issues (e.g., Internet advertising).

4. Statistics.

5. Damages, including alleged damages to plaintiffs and alleged benefit to defendants.

VIII. AMENDMENT AND ALTERING OF SCHEDULING ORDER:

This Scheduling Order may be altered or amended in accordance with Fed. R. Civ. P. 16.

IX. NAMES, ADDRESS, PHONE NUMBERS AND SIGNATURES OF COUNSEL

August 5, 2007

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X. PROVISION FOR APPROVAL OF THE COURT AND SIGNATURE LINE FOR THE COURT

ORDERED, that this proposed scheduling order has been agreed to by parties in the above-captioned actions, and is deemed sufficient ~~thereof~~. LLS

Dated: New York, New York
August 8, 2007

SO ORDERED:

Louis L. Stanton

HONORABLE LOUIS L. STANTON, U.S.D.J.